IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Bail Appl..No. 4932 of 2007()

---

CRIME NO.69/07 OF KADAKKAVOOR POLICE STATION

.....

: PETITIONER/3RD ACCUSED

---

SANTHOSH, S/O.NATESAN, AGED 27 YEARS,
KONNAYIL VEEDU, VAKKOM.

BY ADV. SRI.J.JAYAKUMAR

RESPONDENTS:

---

STATE OF KERALA,
REPRESENTING S.H.O., KADAKKAVOOR POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J**

---

**B.A.No.4932 of 2007**

---

**Dated this the 14th day of August, 2007**

**ORDER**

Application for anticipatory bail. The petitioner is the 3rd accused in the crime. Altogether 4 persons were arrayed as accused. The 4th accused has now been deleted from the array of accused. The crux of the allegation is that on account of prior animosity, the accused persons in furtherance of their common intention assaulted the defacto complainant with dangerous weapons like iron rod etc. The alleged incident took place on 7.3.07. Accused 1 and 2 have already been arrested and released on bail. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations against the petitioner are totally false. It is prayed that directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

3. The application is opposed by the learned Public Prosecutor . The learned Public Prosecutor submits that there are no circumstances justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

4. I have considered all the relevant inputs. I find merit in the opposition by the learned Public Prosecutor . This, I am satisfied, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail. There are no features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

**(R.BASANT, JUDGE)**

rtr/-